



**The Comptroller General  
of the United States**

Washington, D.C. 20548

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## **Decision**

**Matter of:** Applied Systems Corporation--Reconsideration

**File:** B-234159.2

**Date:** March 28, 1989

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### **DIGEST**

Request for reconsideration of dismissal of protest is denied where dismissal was due to protester's failure to file timely comments on agency report; protester's alleged unawareness of comment filing requirements is not an excuse because protester is charged with constructive notice of Bid Protest Regulations through their publication in Federal Register and Code of Federal Regulations.

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### **DECISION**

Applied Systems Corporation requests reconsideration of our March 13, 1989 dismissal of its protest under invitation for bids (IFB) No. F33659-88-B-A037, issued by the Department of the Air Force for interferometer height gauges. We dismissed Applied Systems' protest of award to Federal Products Corporation for failure to meet mandatory requirements because the protester did not file written comments on the agency's administrative report, or a written statement of continued interest in the protest, within 10 working days of the due date for receipt of the report. In its request for reconsideration, the protester contends that its response was timely received by our Office within 10 working days of the firm's March 1 receipt of the agency's administrative report and that the firm never received the standard notice sent to protesters by our Office to acknowledge receipt of a protest and advising of the report due date, in this case February 23.

We affirm the dismissal.

Applied Systems' protest was filed in our Office on January 17, 1989. On that same day, we sent Applied Systems a standard acknowledgment notice informing the protester of the requirement under our published Bid Protest Regulations, 4 C.F.R. § 21.3(k) (1988), that within 10 working

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days of receipt of the administrative report on the matter, the firm's written comments responding to the report or requesting that the case be decided on the existing record be submitted to our Office. Our notice further advised that the due date for the agency report was February 23, that the protester should notify our Office at that time if it did not receive the report, and that unless we heard from the protester within 10 working days of our receipt of the report we would dismiss the protest.

The Department of the Air Force timely filed its administrative report with our Office on February 23, although Applied Systems alleges it did not receive the report until March 1. We dismissed the protest and closed our file on the matter on March 13 because the protester had not responded to the report by the March 9 comment due date (i.e., 10 working days after February 23). Subsequently, we received the protester's comments on the report.

The filing deadlines in our regulations are prescribed under the authority of the Competition in Contracting Act of 1984 (CICA); their purpose is to enable us to comply with the statute's mandate that we resolve bid protests expeditiously. 31 U.S.C. § 3554 (Supp. IV 1986); U.S. Shutter Co.--Reconsideration, B-219952.2, Jan. 15, 1986, 86-1 CPD ¶ 42. It is not our policy to reopen a protest file where the protester has failed to respond in a timely manner to the report, since to do so would be inconsistent with that purpose. Id. Our regulations require that the contracting agency furnish our Office with a report on the protest within 25 working days after the protest is filed. 4 C.F.R. § 21.3(i). Our regulations also specifically provide (as reflected in our standard protest acknowledgment letter) that we will assume the protester received the agency report no later than the scheduled due date as specified in the standard acknowledgment notice, unless otherwise advised by the protester, and also provide for our dismissal of the protest without action if we do not timely hear from the protester. 4 C.F.R. § 21.3(k).

Notwithstanding Applied Systems' alleged nonreceipt of our acknowledgment notice indicating a report due date of February 23, it has long been our position that since our regulations are published in the Federal Register and the Code of Federal Regulations, protesters are on constructive notice of their contents. L & G Maintenance Co.--Reconsideration, B-227240.4, Aug. 7, 1987, \_\_\_ CPD ¶ \_\_\_. A protester's professed lack of knowledge of these published regulations is not a basis for waiving the requirements. All Destinations, B-233505.3, Dec. 29, 1988, 88-2 CPD ¶ 640.

Thus, we consider Applied Systems to have been on constructive notice of the February 23 report due date (25 working days after the protest filing date) and that if it did not contact our Office within 10 days after the scheduled due date for the agency report, its protest would be dismissed.

Bid protests are serious matters which require effective and equitable procedural standards to assure both that parties will have a fair opportunity to present their cases, and that protests can be resolved in a reasonably speedy manner. All Destinations, B-233505.3, supra. Since Applied Systems had the opportunity to express timely continued interest in the protest, our reopening of the file would be inconsistent with our purpose of providing a fair opportunity for protesters to have their objections considered without unduly disrupting the procurement process. L & G Maintenance Co.--Reconsideration, B-227240.4, supra.

In any case, even if we were to reinstate the protest, it appears Applied Systems is not an interested party eligible to maintain a protest against this award. Under our Regulations, we will consider only protests by interested parties, i.e., actual or prospective bidders or offerors whose direct economic interests would be affected by the award of a contract or the failure to award a contract. 4 C.F.R. §§ 21.0(a), 21.1(a). A party is not interested to maintain a protest if it would not be in line for award if the protest were sustained. See State Technical Institute at Memphis, B-229695 et al., Feb. 10, 1988, 67 Comp. Gen. \_\_\_, 88-1 CPD ¶ 135. The record here indicated that the protester was only third low, and thus not next in line for award.

The original dismissal is affirmed.



James F. Hinchman  
General Counsel